83-6087

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SUPREME COURT U.S.

IN THE

SUPREME COURT of the UNITED STATES

GJERGJ GJIELI,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent,

NICKOLA LULGJURAJ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent,

ZEFF LULGJURAJ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN J. POMANN
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Westland, Michigan 48185
(313) 421-4820

Attorney for the Petitioners,
Nickola Lulgjuraj and Zeff Lulgjuraj
IN FORMA PAUPERIS

QUESTIONS PRESENTED

Zeff Lulgjuraj and Nickola Lulgjuraj respectfully petitions that a Writ of Certiorari issue to review the Order of the Court of Appeals for the Sixth Circuit, entered in this matter, September 21, 1983, petition for rehearing denied December 14, 1983.

I. Does the offense of bribery under 18 U.S.C. 201(b)(3) require the act induced to fall within the scope of the federal employees "official function"?

II. Did U.S. v Hastings intend to negate the so-called "Legal Entrapment" doctrine expounded in Hampton v U.S.?

III. Petitioners adopt the balance of issues presented by Petitioner, Gjergj Gjieli.

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CASES:

Hampton v United States (1976) 425 U.S. 484; 48 L. Ed. 2d 113; 96 Sup. Ct. 1646	5,6
United States v Brown 635 F. 2d 1207 (6th Cir. 1980)	5,6
United States v Hastings _____ U.S. ____; 51 U.S.L.W. 4572 (U.S. 5/23/83)	5

ORDERS BELOW

The Order of the Court of Appeals for the Sixth Circuit was issued on September 21, 1983, scheduled for publication. It appears in the Appendix filed by petitioner, Gjergj Gjieli. The Order of the Court of Appeals denying rehearing issued on December 14, 1983. The mandate issued December 22, 1983, of the Court of Appeals appears in the Appendix, hereto.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit affirmed Petitioner's criminal conviction by Opinion decided and filed on September 21, 1983. An Order denying rehearing was entered on December 14, 1983. On motion of Petitioner, Gjergj Gjieli, for extension of time for filing his petition, was joined by these Petitioners, but no order was entered. Jurisdiction is invoked under 28 U.S.C. Sec. 1254 (1).

CONSTITUTIONAL PROVISIONS INVOKED

United States Constitution, Amendment 5:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment 6:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

STATUTORY PROVISIONS INVOLVED

18 U.S.C. Section 201 (a):

"(a) For the purpose of this section:

'public official' means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror; and

'person who has been selected to be a public official' means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed; and

'official act' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit."

18 U.S.C. Section 201(b)(3):

"(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(1) to influence any official act; or

* * *

(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty, or

* * *

STATEMENT OF THE CASE

Petitioners appeal from a conviction for bribery of a federal official and conspiracy to bribe a federal officer. They were convicted after a jury trial held in the Eastern District of Michigan, Southern Division, before the Honorable

Horace W. Gilmore. Petitioner Zeff Lulgjuraj was sentenced to five years and Nickola Lulgjuraj was sentenced to three years, but he is free on bond. The Court of Appeals for the Sixth Circuit affirmed Petitioners' conviction on September 21, 1983, the Honorable Pierce Lively dissenting. The Court of Appeals has stayed its issuance of mandate, although a mandate was issued December 22, 1983.

The Petitioners adopt the statement of facts found in the petition filed by Gjergj Gjieli, but wish to point out further factors relevant to Zeff Lulgjuraj and Nickola Lulgjuraj. The highlights of those facts are:

1] Neither Nickola Lulgjuraj or Zeff Lulgjuraj initiated nor knew of any "deal" with covert.

2] They were never told how Zeff Lulgjuraj was to be released from prison.

3] Both Nickola Lulgjuraj and Zeff Lulgjuraj dutifully followed the directions of the agent and had no input into any plan or conspiracy.

REASONS FOR GRANTING THE WRIT

As set out in the petition of Gjergj Gjieli, we have issues of major signifance to wit:

1] A "first impression" type of ruling by the Sixth Circuit regarding 18 U.S.C. 201 (b)(3) in defining "official duty".

2] Whether Hastings was intended to negate the considerations of legal entrapment as expounded in Hampton.

The Offense Of Bribery Under 18 U.S.C. 201 (b)(3) Requires The Act Induced To Fall Within The Scope Of The Federal Employees Official Function.

At the trial level, the following instructions were requested by Defendants, but were not given:

"Defendant's Request No. 10

WHAT THE CRIMES CHARGED AGAINST DEFENDANTS ARE NOT

You have heard the Government witnesses testify that Defendants plotted for the illegal release or escape of Zeff Lulgjuraj from prison. This is not the reason that the Defendants are on trial. Nor are they on trial for paying $100,000 for this escape plan.

You cannot convict these Defendants if you merely find this to be the case.

You must find that the Defendants and each of them plotted to, or did pay the $100,000 to Special Agent Robert Van Hengel in his official capacity specifically to induce him to violate his official duty to effect the unlawful removal of Zeff Lulgjuraj from prison.

This instruction to be read in conjunction with the Government's requests, numbers 11, 12, 13, 14, 15, 16, 17, and 18.

PURPOSE OF THE ALLEGED CONSPIRACY

The purpose of the conspiracy herein alleged was to induce Robert Van Hengel, in his capacity as a Government official, to act contrary to his duty as such public official."

Defendant's Supplemental Request No. 2

DEFINITION OF OFFICIAL DUTY

Official duty would encompass any decision or action on any question, matter, cause, suit, proceeding or controversy, which may, at any time be pending, or which may by law be brought before any public official in his official capacity or in his place of trust. See definition of "Official Act", defined in 586, F.2d 912 (1978, 2d Circuit)."

These instructions are the crux of the Defendants position relative to the definition of bribery of a federal employee - there must be a nexus, overtly demonstrated (not by assumption or inuendo), that the act induced is related to the actual office of the employee, or at least a clear showing that Defendants so believed.

This writer firmly believes that the jury would have acquitted all the Defendants if the government needed to prove such an element of the offense and were so instructed.

No definition of "official duty" was given to the jury.

These petitions adopt the further reasoning of petitioner, Gjergj Gjieli, and the dissenting opinion of Judge Lively.

II.

United States v Hastings Did Not Intend To Negate The So-Called Legal Entrapment Doctrine Expounded In Hampton v United States.

At the oral argument of this matter in the Sixth Circuit, all the Judges called the conduct of the prosecution, "outrageous". Yet the opinion ignored the principles as expounded by the Defendants, set out in Hampton v United States, 425 U.S. 484 (1976) and the Sixth Circuits own opinion in United States v Brown, 635 F.2d 1207 (6th Cir. 1980), and turned the case on an interpretation of United States v Hastings, _____U.S. ____; 51 U.S.L.W. 4572 (U.S. 5/23/83).

The petition of Gjergj Gjieli spells out some of the problems with the interpretation. As applied to Zeff Lulgjuraj and Nickola Lulgjuraj, the reasoning fails even further.

The statement in the opinion (U.S. v Gjieli et. al.) Judge Kennedy that the prosecutors fraud

> "...was in its effect on Defendants' convictions harmless beyond reasonable doubt..." (pg.21 of the opinion).

is ludicrous for at the time of the fraud, Gjergj Gjieli had quit his job and left the state and absolutely no involvement or activity by Nickola Lulgjuraj or Zeff Lulgjuraj was demonstrated prior to the "ruse" (as the scam was called at the trial level). Had the "ruse" not taken place, the logical speculation is that the agents would still be waiting for

further contact. No evidence, other than that gathered as a direct result of the "ruse", was presented against Nickola Lulgjuraj or Zeff Lulgjuraj. Ergo, the "ruse" was terribly prejudicial to the conviction of these petitioners.

Further, the statement that the other Defendants were

> "... not directly involved in the improper removal of Zeff Lulgjuraj from a prison..." (pg. 21 & 22 of the opinion).

is not true as applied to Nickola Lulgjuraj, because it was at that fateful meeting between the agent and Zeff Lulgjuraj that Nickola, Zeff's son, was selected by Agent Van Hangel to act as the "go-between" and hence was born his involvement in this matter.

These immigrant petitioners, who don't command the English language, complain that all their actions were controlled and directed by the government agents and at the sidelines guiding the "investigation", U.S.A.A.G. John Thompson, (who later was to act as grand jury leader and trial prosecutor*).

Thusly, the opinion upholds a conviction that cannot withstand the application of the criteria finding "legal entrapment" as set out in Hampton & Brown (supra).

*The propriety of the roles played by Mr. Thompson in this matter at investigation, pre-trial and trial was strenuously objected to by Defendants both at trial and at the appeal level, but each time the objections were not even dealt with.

CONCLUSION

Initially, guidance is needed, relative to the definition of bribery, under 18 U.S.C. 201 (b)(3), requiring as an element of the offense, a relationship to the position of trust given an individual by the Federal Government.

Secondly, this entire case has, to this point, been a whitewash of impropriety and misconduct of the federal agents and prosecutor, zealously overreaching for a "conviction", which must not be allowed to stand as an insult to the integrity of the Judicial system of the United States.

THEREFORE, it is respectfully prayed that this Court grant a writ of certiorari, reverse the conviction below and order the prosecution dismissed.

Respectfully submitted,

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33300 W. Warren, Suite 202
Westland, Michigan 48185
(313) 421-4820

Attorney for the Petitioners, Zeff Lulgjuraj and Nickola Lulgjuraj

PROOF OF SERVICE

State of Michigan]
County of Wayne] ss:

John J. Pomann being first duly sworn, deposes and says that he served three copies of the PETITION FOR WRIT OF CERTIORARI in this cause, as per statue herein made and provided, on the attorneys of record, Solicitor General of the United States, Leonard Gilman, Warren D. Bracy and Leslie R. Seeligson, by mailing the same to them at their respective addresses with postage full prepaid thereon on the 30th day of December, 1983.

Subscribed and sworn to before me this 30th day of December A.D. 1983.

R E Smith

Notary Public

No. 81-1087

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

DEC 14 1983

JOHN P. HEHMAN, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GJERGJ GJIELI,

Defendant-Appellant.

ORDER

Before: LIVELY, Chief Circuit Judge; KENNEDY, Circuit Judge; and WILHOIT,* District Judge.

The Court not having favored rehearing en banc in this case, the petition for rehearing in the matter of Gjergj Gjieli is referred to our panel for disposition.

Upon consideration, IT IS ORDERED that the petition for rehearing be and hereby is DENIED.

ENTERED BY ORDER OF THE COURT

John P. Hehman
Clerk

*Honorable Henry R. Wilhoit, Jr., United States District Court for the Eastern District of Kentucky, sitting by designation.

Appendix - pg 1

United States Court of Appeals

FOR THE SIXTH CIRCUIT

FILED

SEP 21 1983

JOHN P. HEHMAN, Clerk

No. 81-1087/88/89

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

GJERGJ GJIELI (81-1087),
NICKOLA LULGJURAJ (81-1088),
ZEFF LULGJURAJ (81-1089),

Defendants-Appellants.

Before: LIVELY and KENNEDY, Circuit Judges; and WILHOIT, District Judge.

J U D G M E N T

ON APPEAL from the United States District Court for the Eastern District of Michigan.

THIS CAUSE came on to be heard on the record from the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said District Court in this case be and the same is hereby affirmed.

No costs taxed.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

John P. Hehman
Clerk

Issued as Mandate: December 22, 1983

A True Copy.

COSTS: NONE

Attest:

Filing fee.....$
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Total.....$

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No. 83-6087

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UNITED STATES OF AMERICA,

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Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Motion for Leave to Proceed in Forma Pauperis

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Attorney for Nickola and Zeff Lulgjuraj

IN THE

SUPREME COURT of the UNITED STATES

NICKOLA LULGJURAJ,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent
AND
ZEFF LULGJURAJ,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

_____/

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

NOW COMES John J. Pomann, attorney for Nickola Lulgjuraj and Zeff Lulgjuraj, and for their motion says:

1. That I was appointed under the Criminal Justice Act (18 USC§201 (b), 307) to act as attorney in the Sixth Circuit Court of Appeals for indigent petitioner Nickola Lulgjuraj and subsequently for indigent petitioner Zeff Lulgjuraj when his attorney was disbarred.

2. That the undersigned attorney believes circumstances have not changed and that continued aid is needed as neither can afford counsel or the costs of an appeal to this Honorable Court.

WHEREFORE, Petitioners pray they be granted Forma Pauperis status and they be allowed to so proceed.

Respectfully submitted,

Dated: January 5, 1984

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(313) 421-4820

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record and all other interested parties to the above cause by mailing the same to them at their respective addresses with postage fully prepaid thereon on the 5th day of January, 19 84

Lorraine K. Radtke